

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1183 of 1979

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

1 & 2 Yes

3 to 5 No

NEW RESSIAN AUTOMOBILES

Versus

UNION OF INDIA

Appearance:

MR ANAND YAGNIK for MR GIRISH PATEL for Petitioner

MR SB VAKIL for Respondent No. 1

MR BB NAIK for Respondent No. 2

CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 18/02/2000

ORAL JUDGEMENT

Being aggrieved by the judgment and decree passed
in Civil Suit No. 2923/77 by the City Civil Court,

Ahmedabad, the appellant-plaintiff has approached this court by way of this First Appeal.

2. The facts in a nutshell are as under:

3. The plaintiff is a partnership firm having telephone connections at different places of its business. The case of the plaintiff in the plaint is that though the plaintiff could not pay the telephone bills in respect of its telephone connections for Telephone Nos. 23614, 24933 and 24408, the defendant authorities were trying to disconnect other telephone connections in respect of which the entire amount payable in respect of the bills for those telephones had been paid by the plaintiff. In the circumstances, in the suit it was prayed that the defendants be restrained by a permanent injunction from disconnecting the telephone connections in respect of Telephone Nos. 20437 and 877138, the connections in respect of which all payments due by the plaintiff were paid.

4. The suit was resisted by the defendants mainly on the basis of rule 433 of Indian Telegraphs Rules, 1951 (hereinafter referred to as 'the Rules'). The defendants had submitted before the court that in view of the provisions of the said rule, it was open to the defendants to disconnect telephones in respect of which all telephone charges were paid because the plaintiff had not paid telephone charges in respect of Telephone Nos. 20437 and 877138.

5. Ultimately, after hearing the concerned parties and upon perusal of the evidence led before the court, the trial court had dismissed the suit by the judgment dated 30th July 1979.

6. Learned Advocate Shri Yagnik appearing for the plaintiff has submitted that the impugned judgment delivered by the trial court is unjust and illegal because it was not open to the defendants to disconnect telephone connections in respect of which all charges were duly paid by the plaintiff.

7. After hearing learned advocate Shri Yagnik and upon perusal of rule 433 of the Rules, I do not find any illegality committed by the trial court. Rule 433 of the Rules reads as under:

"Default of payment, if made on or before
the due date, rent or other charges in respect of
the telephone service provided are not paid by

the subscriber in accordance with these rules or bills for charges in respect of calls (local or trunk) or phonogram or other dues from the subscriber are not duly paid by him, any telephone or telephones rented by him may be disconnected without notice. The telephone or telephones may, if the Telegraph Authority thinks fit, be resorted if the defaulting subscriber pays the rent and all other due outstanding from him together with an installation fee within such period of time as may be prescribed by the authority from time to time." (emphasis supplied)

It is not in dispute that telephone charges in respect of Telephone Nos. 23614, 24933 & 24408 were not paid by the plaintiff. Looking to the provisions of the Rules, it was open to the defendants to disconnect any telephone or telephones rented by the subscriber without any notice. In the instant case also, the plaintiff subscriber had not paid its dues in respect of three telephones and, therefore, the defendants could not have been restrained from disconnecting telephone Nos. 20437 and 877138. In view of the said fact and legal position emerging from the rule cited hereinabove, in my opinion, the findings and the conclusion arrived at by the trial court cannot be interfered with and therefore this appeal deserves to be dismissed.

8. It is also pertinent to note that learned advocate Shri Yagnik appearing for the appellant has fairly submitted that at present two telephone connections which are subject-matter of the suit are not in existence. It appears that the said telephone connections have been either disconnected on account of closure of business by the plaintiff firm or they have been transferred to somebody else. In the circumstances, in my opinion, grant of any order in favour of the plaintiff would also be absolutely futile. This is also an additional reason for which this court should not interfere with the order of the trial court as it would be of no use to restrain the defendants from disconnecting telephone connections which are not in existence.

9. Looking to the above-referred clear legal position, the trial court had rightly not granted permanent injunction prayed for in the suit and the suit was rightly dismissed.

10. In view of the facts stated hereinabove, I do not find any illegality in the impugned judgment and,

therefore, this appeal is dismissed with no order as to costs.

(hn)